

SPECIAL REQUIREMENTS FOR HABEAS CORPUS PETITIONS
INVOLVING THE DEATH PENALTY

(a) **Applicability.** This rule governs the procedures for a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. The application of this rule may be modified by the judge to whom the petition is assigned. These rules supplement the Rules Governing Section 2254 Cases and do not in any way alter or supplant those rules.

(b) **Initiation of Proceedings and Request For a Stay of Execution.** When a death warrant has been issued, and after the Idaho Supreme Court has decided the consolidated direct appeal/post-conviction appeal and the United States Supreme Court has acted on a petition for writ of certiorari, if any, a petitioner may seek relief from a state court conviction and capital sentence in this court by filing a federal habeas corpus petition.

(1) Preliminary Steps. At his or her option, a petitioner may take the following steps preliminary to filing a federal habeas corpus petition by filing an original and a copy of the following:

- (A) Application for a stay of execution;
- (B) Application to proceed *in forma pauperis* with supporting affidavit, if applicable;
- (C) Application for the appointment of counsel or to proceed pro se, if applicable;
- (D) Statement of issues re: petition for writ of habeas corpus.

(2) Statement of Issues. The statement of issues re: petition for writ of habeas corpus must:

- (A) state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons for denial of relief;
- (B) state that petitioner intends to file a petition for writ of habeas corpus;
- (C) list the issues to be presented in the petition for writ of habeas corpus; and
- (D) certify that the issues outlined raise substantial questions of constitutional law, are non-frivolous, and are not being raised simply for the purpose of delay.

(c) **Review of Petition or Preliminary Initial Filings by Court.** Upon receipt of the petition or initial filings, the Clerk of Court must immediately assign the matter to a district judge. When an application for the appointment of counsel or other preliminary initial filings are made before a petition for writ of habeas corpus has been filed, the matter must be assigned to a district judge in the same manner that a petition would be assigned. The district judge must immediately review the petition or preliminary initial filings, and, if the matter is found to be properly before the court, the court will issue an initial review order (1) staying the execution for the duration of the proceedings in this court, (2) setting an initial case management conference, and, if applicable, (3) granting or denying the application to proceed in forma pauperis; and (4) granting or denying the application for the appointment of counsel.

(1) Notice of Stay. Upon the granting of any stay of execution, the Clerk of Court will immediately notify the following: counsel for the petitioner; the Idaho Attorney General; the warden of the Idaho Maximum Security Institution; and, when applicable, the clerks of the Idaho Supreme Court and the Ninth Circuit Court of Appeals. The Idaho Attorney General is responsible for providing the Clerk of Court with a telephone number where he or she or a designated deputy attorney general can be reached twenty-four (24) hours a day.

(d) Counsel.

(1) Appointment of Counsel. Each indigent capital case petitioner must be represented by counsel unless petitioner has clearly elected to proceed pro se and the court is satisfied, after a hearing, that petitioner's election is knowing and voluntary. Unless petitioner is represented by retained counsel, counsel must be appointed in every such case at the earliest practicable time.

(2) **Qualifications of Appointed Counsel.** Upon application by petitioner for the appointment of counsel, the court must appoint the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho as lead counsel. Upon request of the Capital Habeas Unit, the court must also appoint an attorney from the Criminal Justice Act (CJA) Capital Habeas Panel as second counsel. In the event the Capital Habeas Unit is unable to provide representation of conflicts, existing workload, or other special factors, it must recommend the attorneys from the CJA Capital Habeas Panel to be appointed. The court will either accept the recommendation or select other attorneys from the CJA Capital Habeas Panel.

e) **Case Management Conferences.** After a capital habeas corpus proceeding has been assigned to a judge and counsel has been appointed, the assigned judge shall conduct an initial case management conference to discuss anticipated proceedings in the case. In all cases where payment for attorneys' fees and investigative and expert expenses are requested under the CJA, the petitioner's counsel will be required to prepare phased budgets for submission to the Court at the beginning of each of the following applicable phases: Phase I, Appointment of Counsel, Record Review and Preliminary Investigation; Phase II, Petition Preparation or Amendment; Phase III, Procedural Defenses, Discovery related to Procedural Defenses, Motion for Evidentiary Hearing, and Briefing of Claims; and Phase IV, Discovery related to Merits, Evidentiary Hearing, and Final Briefing. After the initial case management conference, the assigned judge may schedule additional case management conferences in advance of each of the budgeting phases. The assigned judge also may schedule one or more ex parte conferences with the petitioner's counsel to implement the budgeting process.

(f) **Procedures for Considering the Petition for Writ of Habeas Corpus.** The following schedule and procedures apply, subject to modification at the discretion of the assigned district judge.

(1) **Petition for Writ of Habeas Corpus.** Petitioner must file a final petition for writ of habeas corpus no later than the date set in the court's initial scheduling order.

(2) **State Court Record.** The respondent must, as soon as practicable after the initiation of the habeas corpus proceeding, but in any event no later than when respondent files an answer or pre-answer motion in response to the petition, file with the court one copy of the following:

(A) Transcripts of the state court proceedings.

(B) Clerk's records to the state court proceedings.

(C) The briefs filed on consolidated appeal to the Idaho Supreme Court and on any petition for rehearing.

(D) Copies of all motions, briefs and orders in any post-conviction relief proceeding.

(E) An index to all materials described in paragraphs (A) through (D) above.

If any items required to be filed in paragraphs (A) through (D) above are not available, the respondent must so state and indicate when, if at all, such missing material(s) will be filed.

If counsel for the petitioner finds that the respondent has not complied with the requirements of this section, or if the petitioner does not have copies of all of the documents filed with the court, the petitioner must immediately notify the court in writing with a copy to the respondent. Thereafter, the respondent must provide copies of any missing documents to the petitioner.

(3) **Procedural Defenses.** At the initial case management conference, or at a reasonable time thereafter, the Court may authorize the respondent to file a pre-answer motion to dismiss, alleging that the petitioner's claims are barred by a failure to exhaust, a state procedural bar, the statute of limitations, or *Teague v. Lane*. If authorized, such motions must be filed within sixty (60) days after the petition is filed. The petitioner's response brief must be filed within sixty (60) days after the motion to dismiss is filed. If a party believes that discovery is needed, the party must file a motion for discovery and briefly outline the particular discovery needed and explain how he or she anticipates the discovery will aid the claim or defense. If the Court grants a motion for discovery, it will issue an order extending the petitioner's response time accordingly. The respondent's reply in support of the motion to dismiss must be filed within twenty (20) days after the petitioner's response is filed.

(4) Unexhausted Claims. If a petition is found to contain unexhausted claims for which a state remedy may still be available, the court may:

(A) dismiss the petition without prejudice; or

(B) upon motion, grant a petitioner's request to withdraw the unexhausted claims from the petition, and grant a temporary stay of execution to allow a petitioner to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the federal habeas case will be stayed, and the petitioner must file a quarterly report about the status of the state court case in the federal habeas case. After the state court proceedings have been completed, petitioner may amend the federal petition to add the newly exhausted claims.

(5) Answer. The respondent's answer to the petition shall be filed within sixty (60) days after a decision on the respondent's motion to dismiss, or within sixty (60) days after the petition has been filed if the court has not authorized the respondent to file a pre-answer motion.

(6) Traverse and Motion for Discovery on Merits. Within sixty (60) days after the answer is filed, the petitioner may file a traverse, if necessary. If a party wishes to seek authorization to conduct discovery related to the merits of any claim or defense, the party shall file a motion for discovery within sixty (60) days after the answer is filed. Any motion for discovery must contain a brief outline of the particular discovery needed, explain how the party anticipates the discovery will aid the claim or defense; and prove entitlement to discovery under 28 U.S.C. § 2254(e)(2), Rule 6 of the Rules Governing Section 2254 Cases, or any other applicable standard.

(7) Motion for Evidentiary Hearing on Merits. Any motion for an evidentiary hearing must be made within 60 days after the answer is filed. The motion must specify which factual issues require a hearing.

(A) If the court determines that an evidentiary hearing is necessary, it will set a schedule for the hearing, order preparation of the transcript after hearing, and provide copies of the transcript to the parties. In its discretion, the court may order post-hearing briefing and argument.

(B) If the court determines that an evidentiary hearing is not necessary, it may take the matter under advisement on the pleadings or order briefing on the merits.

(g) **Court's Final Decision.** The court will issue a written decision granting or denying the petition.

The Clerk of Court will immediately notify the counsel for the petitioner, the Idaho Attorney General, the warden of the Idaho Maximum Security Institution, and the Clerk of the Idaho Supreme Court of the court's decision or ruling on the merits of the petition.

The Clerk of Court will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit, and if applicable, the Clerk of the United States Supreme Court, by telephone of:

(1) any final order denying or dismissing a petition without a certificate of appealability; or

(2) any order denying or dissolving a stay of execution.

If the petition is denied and a certificate of appealability is issued, the court will grant a stay of execution which will continue in effect until the Ninth Circuit Court of Appeals acts upon the appeal or the order of stay.

When a notice of appeal is filed, the Clerk of Court must immediately transmit the record to the Clerk of the United States Court of Appeals for the Ninth Circuit.

(h) Pleadings, Motions, Briefs, and Oral Argument.

(1) Caption. Every pleading, motion, or other application for an order from the court which is filed in these matters must contain a notation in the caption which indicates that it is a capital case. The notation "CAPITAL CASE" must appear in bold, capital letters to the right of the case entitlement and directly beneath the Case Number.

The following is provided as an example:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

JOHN DOE,
Petitioner,

vs.

A.M. ARAVE,
Respondent

Case No.: _____

CAPITAL CASE
APPLICATION FOR STAY OF
EXECUTION

(2) Motion Practice. Unless this rule or an order of the court provides otherwise, motion practice must comply with the applicable local rules of the court.

(3) Briefs.

(A) Briefs in support of and in opposition to motions must be no longer than thirty (30) pages. If a reply brief is permitted, it must be no longer than fifteen (15) pages.

(B) Principal briefs addressing the merits of the claims set forth in the petition must be no longer than sixty (60) pages, and the reply brief must be no longer than twenty-five (25) pages.

(C) A motion for permission to exceed page limits must be filed on or before the brief's due date and must be accompanied by a declaration stating the reasons for the motion.

(D) No brief may be filed unless permitted by an applicable rule or leave of court.

(4) Discovery. The parties may not conduct discovery without first obtaining leave of court.

(5) Oral argument. Motions and petitions shall be deemed submitted and shall be determined upon the pleadings, briefs, and record. The court, at its discretion, may order oral argument on any issue or claim.

RELATED AUTHORITY

28 U.S.C. § 2254
Rules Governing Section 2254 Cases in U.S. District Courts
Idaho Code Appellate Rule 25(a)(7) (1987)
